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SENATE BILL 648

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Peter Wirth

AN ACT

RELATING TO TAXATION; ADDING DEFINITIONS IN THE CORPORATE  
INCOME AND FRANCHISE TAX ACT; AMENDING CORPORATE INCOME TAX  
RATES; IMPOSING AN ADDITIONAL FRANCHISE TAX; AMENDING ESTIMATED  
CORPORATE INCOME TAX PAYMENTS; RECONCILING MULTIPLE AMENDMENTS  
TO THE SAME SECTION OF LAW IN LAWS 2003.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-2A-2 NMSA 1978 (being Laws 1986,  
Chapter 20, Section 33, as amended) is amended to read:

"7-2A-2. DEFINITIONS.--For the purpose of the Corporate  
Income and Franchise Tax Act and unless the context requires  
otherwise:

A. "affiliated group" means that term as it is used  
in the Internal Revenue Code;

B. "bank" means any national bank, national banking

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1 association, state bank or bank holding company;

2 C. "base income" means that part of the taxpayer's  
3 income defined as taxable income and upon which the federal  
4 income tax is calculated in the Internal Revenue Code for  
5 income tax purposes plus, for taxable years beginning on or  
6 after January 1, 1991, the amount of the net operating loss  
7 deduction allowed by Section 172(a) of the Internal Revenue  
8 Code, as that section may be amended or renumbered, and claimed  
9 by the taxpayer for that year; "base income" also includes  
10 interest received on a state or local bond;

11 D. "business entity" means a corporation or any  
12 other business association, other than a sole proprietorship,  
13 estate or trust;

14 [~~D.~~] E. "corporation" means corporations, joint  
15 stock companies, real estate trusts organized and operated  
16 under the Real Estate Trust Act, financial corporations and  
17 banks, other business associations and, for corporate income  
18 tax purposes, partnerships and limited liability companies  
19 taxed as corporations under the Internal Revenue Code;

20 [~~E.~~] F. "department" means the taxation and revenue  
21 department, the secretary of taxation and revenue or any  
22 employee of the department exercising authority lawfully  
23 delegated to that employee by the secretary;

24 [~~F.~~] G. "fiscal year" means any accounting period  
25 of twelve months ending on the last day of any month other than

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1 December;

2 [~~G.~~] H. "Internal Revenue Code" means the United  
3 States Internal Revenue Code of 1986, as amended;

4 [~~H.~~] I. "net income" means base income adjusted to  
5 exclude:

6 (1) income from obligations of the United  
7 States less expenses incurred to earn that income;

8 (2) other amounts that the state is prohibited  
9 from taxing because of the laws or constitution of this state  
10 or the United States;

11 (3) for taxable years that began prior to  
12 January 1, 1991, an amount equal to the sum of:

13 (a) net operating loss carryback  
14 deductions to that year from taxable years beginning prior to  
15 January 1, 1991 claimed and allowed, as provided by the  
16 Internal Revenue Code; and

17 (b) net operating loss carryover  
18 deductions to that year claimed and allowed; and

19 (4) for taxable years beginning on or after  
20 January 1, 1991, an amount equal to the sum of any net  
21 operating loss carryover deductions to that year claimed and  
22 allowed, provided that the amount of any net operating loss  
23 carryover from a taxable year beginning on or after January 1,  
24 1991 may be excluded only as follows:

25 (a) in the case of a timely filed

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1 return, in the taxable year immediately following the taxable  
2 year for which the return is filed; or

3 (b) in the case of amended returns or  
4 original returns not timely filed, in the first taxable year  
5 beginning after the date on which the return or amended return  
6 establishing the net operating loss is filed; and

7 (c) in either case, if the net operating  
8 loss carryover exceeds the amount of net income exclusive of  
9 the net operating loss carryover for the taxable year to which  
10 the exclusion first applies, in the next four succeeding  
11 taxable years in turn until the net operating loss carryover is  
12 exhausted; in no event may a net operating loss carryover be  
13 excluded in any taxable year after the fourth taxable year  
14 beginning after the taxable year to which the exclusion first  
15 applies;

16 [~~F.~~] J. "net operating loss" means any net  
17 operating loss, as defined by Section 172(c) of the Internal  
18 Revenue Code, as that section may be amended or renumbered, for  
19 a taxable year as further increased by the income, if any, from  
20 obligations of the United States for that year less related  
21 expenses;

22 [~~J.~~] K. "net operating loss carryover" means the  
23 amount, or any portion of the amount, of a net operating loss  
24 for any taxable year that, pursuant to Paragraph (3) or (4) of  
25 Subsection [~~H~~] I of this section, may be excluded from base

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1 income;

2 L. "ownership share" means all interests, direct  
3 and indirect, owned or leased in a business entity;

4 [~~K.~~] M. "person" means any individual, estate,  
5 trust, receiver, cooperative association, club, corporation,  
6 company, firm, partnership, limited liability company, joint  
7 venture, syndicate or other association; "person" also means,  
8 to the extent permitted by law, any federal, state or other  
9 governmental unit or subdivision or agency, department or  
10 instrumentality thereof;

11 N. "related business entity" means a business  
12 entity for which a corporation's ownership share exceeds twenty  
13 percent; provided that business entities with common ownership,  
14 direct plus indirect, of more than twenty percent are related  
15 business entities and are each deemed to have the direct plus  
16 indirect ownership share of the common owner in each of the  
17 other commonly owned business entities;

18 [~~L.~~] O. "secretary" means the secretary of taxation  
19 and revenue or the secretary's delegate;

20 [~~M.~~] P. "state" means any state of the United  
21 States, the District of Columbia, the commonwealth of Puerto  
22 Rico, any territory or possession of the United States or  
23 political subdivision thereof or any political subdivision of a  
24 foreign country;

25 [~~N.~~] Q. "state or local bond" means a bond issued

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1 by a state other than New Mexico or by a local government other  
2 than one of New Mexico's political subdivisions, the interest  
3 from which is excluded from income for federal income tax  
4 purposes under Section 103 of the Internal Revenue Code, as  
5 that section may be amended or renumbered;

6 [Ø-] R. "taxable year" means the calendar year or  
7 fiscal year upon the basis of which the net income is computed  
8 under the Corporate Income and Franchise Tax Act and includes,  
9 in the case of the return made for a fractional part of a year  
10 under the provisions of that act, the period for which the  
11 return is made;

12 [P-] S. "taxpayer" means any corporation subject to  
13 the taxes imposed by the Corporate Income and Franchise Tax  
14 Act; and

15 [Ø-] T. "unitary corporations" means two or more  
16 integrated corporations, other than any foreign corporation  
17 incorporated in a foreign country and not engaged in trade or  
18 business in the United States during the taxable year, that are  
19 owned in the amount of more than fifty percent and controlled  
20 by the same person and for which at least one of the following  
21 conditions exists:

22 (1) there is a unity of operations evidenced  
23 by central purchasing, advertising, accounting or other  
24 centralized services;

25 (2) there is a centralized management or

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1 executive force and centralized system of operation; or  
2 (3) the operations of the corporations are  
3 dependent upon or contribute property or services to one  
4 another individually or as a group."

5 Section 2. Section 7-2A-5 NMSA 1978 (being Laws 1981,  
6 Chapter 37, Section 38, as amended) is amended to read:

7 "7-2A-5. CORPORATE INCOME TAX RATES.--The corporate  
8 income tax imposed on corporations by Section 7-2A-3 NMSA 1978  
9 shall be at the rates specified in the following table:

10	If the net income is:	The tax shall be:
11	Not over [ <del>\$500,000</del> ] <u>\$250,000</u>	[ <del>4.8%</del> ] <u>0%</u> of net
12		income
13	<del>[Over \$500,000 but not</del>	
14	<del>over \$1,000,000</del>	<del>\$24,000 plus</del>
15		<del>6.4% of excess</del>
16		<del>over \$500,000]</del>
17	Over [ <del>\$1,000,000</del> ] <u>\$250,000</u>	[ <del>\$56,000</del>
18		<del>plus] 7.6% of excess</del>
19		<del>over \$1,000,000]</del>
20		<u>\$250,000."</u>

21 Section 3. Section 7-2A-5.1 NMSA 1978 (being Laws 1986,  
22 Chapter 20, Section 37, as amended) is amended to read:

23 "7-2A-5.1. CORPORATE FRANCHISE TAX AMOUNT.--

24 A. The corporate franchise tax amount imposed on a  
25 corporation by Section 7-2A-3 NMSA 1978 shall be fifty dollars

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1     (\$50.00) per taxable year or any fraction thereof plus the tax  
2     determined under Subsection B of this section reduced, but not  
3     below zero, by the amount of tax determined pursuant to Section  
4     7-2A-5 NMSA 1978.

5             B. The tax imposed by this section is eighty-four  
6     thousandths of one percent of the sum of the following:

7                     (1) the excess above five million dollars  
8     (\$5,000,000) of the corporation's property in this state  
9     calculated pursuant to Subsection C of this section;

10                    (2) the excess above one million two hundred  
11    thousand dollars (\$1,200,000) of the corporation's payroll in  
12    this state calculated pursuant to Subsection D of this section;  
13    and

14                    (3) the excess above nine million three  
15    hundred thousand dollars (\$9,300,000) of the corporation's  
16    sales in this state calculated pursuant to Subsection E of this  
17    section.

18             C. Except as provided in Subsection F of this  
19    section, the corporation's property in this state is the amount  
20    of property that is the numerator of the corporation's property  
21    factor determined under Section 7-4-11 NMSA 1978 for the  
22    taxable year plus the sum of the amount of property that is the  
23    numerator of the property factor determined under Section  
24    7-4-11 NMSA 1978 for each related business entity multiplied by  
25    the corporation's ownership share in the business entity for

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1 the taxable year of the business entity ending with or within  
2 the corporation's taxable year.

3 D. Except as provided in Subsection F of this  
4 section, the corporation's payroll in this state is the amount  
5 of payroll that is the numerator of the corporation's payroll  
6 factor determined under Section 7-4-14 NMSA 1978 for the  
7 taxable year plus the sum of the amount of payroll that is the  
8 numerator of the payroll factor determined under Section 7-4-14  
9 NMSA 1978 for each related business entity multiplied by the  
10 corporation's ownership share in the business entity for the  
11 taxable year of the business entity ending with or within the  
12 corporation's taxable year.

13 E. Except as provided in Subsection F of this  
14 section, the corporation's sales in this state are the amount  
15 of sales that is the numerator of the corporation's sales  
16 factor determined under Section 7-4-16 NMSA 1978 for the  
17 taxable year plus the sum of the amount of sales that is the  
18 numerator of the sales factor determined under Section 7-4-16  
19 NMSA 1978 for each related business entity multiplied by the  
20 corporation's ownership share in the business entity for the  
21 taxable year of the business entity ending with or within the  
22 corporation's taxable year.

23 F. For purposes of Subsections C, D and E of this  
24 section:

25 (1) if the corporation's ownership share in a

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1 business entity is eighty percent or more, one hundred percent  
2 shall be used in place of the ownership share; and

3 (2) the amount of a corporation's property in  
4 this state, payroll in this state and sales in this state is  
5 only taken into account once."

6 Section 4. Section 7-2A-9.1 NMSA 1978 (being Laws 1986,  
7 Chapter 5, Section 1, as amended by Laws 2003, Chapter 86,  
8 Section 2 and by Laws 2003, Chapter 295, Section 1) is amended  
9 to read:

10 "7-2A-9.1. ESTIMATED TAX DUE--PAYMENT OF ESTIMATED  
11 TAX--PENALTY--EXEMPTION.--

12 A. Every taxpayer shall pay estimated corporate  
13 income tax and franchise tax to the state of New Mexico during  
14 its taxable year if its tax after applicable credits is five  
15 thousand dollars (\$5,000) or more in the current taxable year.  
16 A taxpayer to which this section applies shall calculate  
17 estimated tax by one of the following methods:

18 (1) estimating the amount of tax due, net of  
19 any credits, for the current taxable year, provided that the  
20 estimated amount is at least eighty percent of the amount  
21 determined to be due for the taxable year;

22 (2) using as the estimate an amount equal to  
23 one hundred percent of the tax due for the previous taxable  
24 year, if the previous taxable year was a full twelve-month  
25 year;

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1 (3) using as the estimate an amount equal to  
2 one hundred ten percent of the tax due for the taxable year  
3 immediately preceding the previous taxable year, if the taxable  
4 year immediately preceding the previous taxable year was a full  
5 twelve-month year and the return for the previous taxable year  
6 has not been filed and the extended due date for filing that  
7 return has not occurred at the time the first installment is  
8 due for the taxable year; or

9 (4) estimating the amount of tax due, net of  
10 any credits, for each fiscal quarter of the current taxable  
11 year, provided that the estimated amount is at least eighty  
12 percent of the amount determined to be due for that quarter.

13 B. If Subsection A of this section applies, the  
14 amount of estimated tax shall be paid in installments as  
15 provided in this subsection. Twenty-five percent of the  
16 estimated tax calculated under Paragraph (1), (2) or (3) of  
17 Subsection A of this section or one hundred percent of the  
18 estimated tax calculated under Paragraph (4) of Subsection A of  
19 this section is due on or before the following dates: the  
20 fifteenth day of the sixth month of the taxable year, the  
21 fifteenth day of the ninth month of the taxable year and the  
22 fifteenth day of the twelfth month of the taxable year.  
23 Application of this subsection to a taxable year that is a  
24 fractional part of a year shall be determined by regulation of  
25 the secretary.

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1 C. Every taxpayer to which Subsection A of this  
2 section applies that fails to pay the estimated tax when due or  
3 that makes estimated tax payments during the taxable year that  
4 are less than the lesser of eighty percent of the [~~income tax~~]  
5 taxes imposed on the taxpayer under the Corporate Income and  
6 Franchise Tax Act or the amount required by Paragraph (2), (3)  
7 or (4) of Subsection A of this section shall be subject to the  
8 interest and penalty provisions of Sections 7-1-67 and 7-1-69  
9 NMSA 1978 on the underpayment.

10 D. For purposes of this section, the amount of  
11 underpayment shall be the excess of the amount of the  
12 installment that would be required to be paid if the estimated  
13 tax were equal to eighty percent of the tax shown on the return  
14 for the taxable year or the amount required by Paragraph (2),  
15 (3) or (4) of Subsection A of this section or, if no return was  
16 filed, eighty percent of the tax for the taxable year for which  
17 the estimated tax is due less the amount, if any, of the  
18 installment paid on or before the last date prescribed for  
19 payment.

20 E. For purposes of this section, the period of  
21 underpayment shall run from the date the installment was  
22 required to be paid to whichever of the following dates is  
23 earlier:

24 (1) the fifteenth day of the third month  
25 following the end of the taxable year; or

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1 (2) with respect to any portion of the  
2 underpayment, the date on which such portion is paid. For the  
3 purposes of this paragraph, a payment of estimated tax on any  
4 installment date shall be applied as a payment of any previous  
5 underpayment only to the extent such payment exceeds the amount  
6 of the installment determined under Subsection D of this  
7 section due on such installment date.

8 F. For the purposes of this section, the amount of  
9 tax deducted and withheld with respect to a taxpayer by a  
10 remitter under the Oil and Gas Proceeds Withholding Tax Act  
11 shall be deemed a payment of estimated tax. An equal amount of  
12 the amount of withheld tax shall be deemed paid on each due  
13 date for the applicable taxable year unless the taxpayer  
14 establishes the dates on which all amounts were actually  
15 withheld, in which case the amounts withheld shall be deemed  
16 payments of estimated tax on the dates on which the amounts  
17 were actually withheld."

18 Section 5. TEMPORARY PROVISION.--If the provisions of  
19 this act increase the amount of estimated payments due on or  
20 before June 15, 2010, that increased amount is not required to  
21 be paid until the first quarterly estimated payment due on or  
22 after September 15, 2010.

23 Section 6. APPLICABILITY.--The provisions of this act are  
24 applicable to taxable years beginning on or after January 1,  
25 2010.

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1           Section 7. EFFECTIVE DATE.--The effective date of the  
2 provisions of this act is January 1, 2010.

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